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PURPLE COMMUNICATIONS, INC.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

PURPLE COMMUNICATIONS, INC.

and

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO

Cases Nos. 21-CA-095151
21-RC-091531
21-RC-091584

**EXCEPTIONS OF RESPONDENT AND
EMPLOYER TO DECISION AND
ORDER OF THE ADMINISTRATIVE
LAW JUDGE**

**EXCEPTIONS OF RESPONDENT AND EMPLOYER
TO DECISION AND ORDER OF
THE ADMINISTRATIVE LAW JUDGE**

EXCEPTIONS

Pursuant to the National Labor Relations Board's Rules and Regulations, including Section 102.46 thereof, Purple Communications, Inc. (hereinafter "the Employer" or "the Respondent") respectfully files the following Exceptions to the Administrative Law Judge's Decision issued by Administrative Law Judge Paul Bogas (hereinafter "the ALJ") on March 16, 2015.

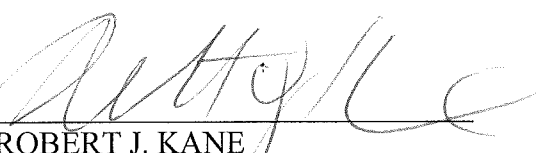
<u>No.</u>	<u>Page(s)</u>	<u>Exception</u>
1.	4:26-30	The Employer excepts to the ALJ's finding that its Internet, Intranet, Voicemail and Electronic Communication Policy "presumptively interferes with employees' Section 7 rights and violates Section 8(a)(1) of the Act unless Respondent rebuts the presumption by showing that the restrictions are justified by special circumstances necessary to maintain production or discipline."
2.	4:39-42; 5:8-9; 5, n. 8.	The Employer excepts to the ALJ's finding that the Employer "has the burden of establishing special circumstances to rebut the presumption [that its Internet, Intranet, Voicemail and Electronic Communication Policy interferes with employees' Section 7 rights and violates Section 8(a)(1) of the Act]."
3.	4:39-42	The Employer excepts to the ALJ's conclusion that the Employer's Internet, Intranet, Voicemail and Electronic Communication Policy violates Section 8(a)(1) of the Act.
4.	6:39-41	The Employer excepts to the ALJ's conclusion that the Employer's Internet, Intranet, Voicemail and Electronic Communication Policy is "overly broad" and "unlawfully restricts employees' use of Respondent's email system."
5.	6:47-50; 7:32-36.	The Employer excepts to the ALJ's order that the Employer rescind the Internet, Intranet, Voicemail and Electronic Communication Policy.
6.	6:51- 7:5; 7:40-45.	The Employer excepts to the ALJ's order that the Employer must either "furnish employees with an insert for the current employee handbook that (1) advises that the [Internet, Intranet, Voicemail and Electronic Communication Policy] has been rescinded, or (2) provides a lawfully worded electronic communications policy on adhesive backing that will cover the one containing the unlawful email restrictions; or publish and distribute to employees revised employee handbooks that (1) do not contain the [Internet, Intranet, Voicemail and Electronic Communication Policy], or (2) provide a lawfully worded electronic communications policy.
7.	7:46- 8:4.	The Employer excepts to the ALJ's order that the Employer post at its Corona and Long Beach, California facilities copies of the notice marked "Appendix."
8.	8:4-7.	The Employer excepts to the ALJ's order that the Employer post electronically the notice marked "Appendix" if the Employer customarily communicates with its employees by such means.

No.	Page(s)	<u>Exception</u>
9.		The Employer excepts to the ALJ's refusal to adopt the reasoning set forth in <i>Register Guard</i> , 351 NLRB 1110 (2007), enfd. in relevant part and remanded sub nom. <i>Guard Publishing v. NLRB</i> , 571 F.3d 53 (D.C. Cir. 2009).
10.		The Employer excepts to the ALJ's failure to find and conclude that the Employer's Internet, Intranet, Voicemail and Electronic Communication Policy is lawful under the Act because the Act permits employers to restrict employees from utilizing employer-owned property for non-business purposes provided that the employer's restrictions are otherwise not discriminatory.
11.		The Employer excepts to the ALJ's failure to find and conclude that employees do not have a right to use employer-provided electronic communications systems for Section 7-related purposes in the absence of the employer showing that its restrictions on the use of the employer-provided electronic communications system are justified by special circumstances necessary to maintain production or discipline
12.		The Employer excepts to the ALJ's failure to find and conclude that employees have other readily available channels to communicate with one another in furtherance of their Section 7 rights, including, but not limited to, personal email accounts, social media, instant messaging, and text messaging, including through the use of smartphones.
13.		The Employer excepts to the ALJ's failure to consider the costs that Respondent will incur as a result of the obligation to permit employees to use Respondent's electronic communications system for Section 7, which the ALJ imposed on the Employer.
14.		The Employer excepts to the ALJ's failure to consider the burdens that Respondent will incur as a result of the obligation to permit employees to use Respondent's electronic communications system for Section 7, which the ALJ imposed on the Employer.
15.		The Employer excepts to the ALJ's failure to adequately consider the impact of the decision on Respondent's ability to monitor employee productivity on the email system.
16.		The Employer excepts to the ALJ's failure to adequately consider the extent to which Respondent can control the use of non-work-related email in light of the ALJ's ruling.

17.		The Employer excepts to the ALJ's failure to consider that his finding that employees are presumed to have a right to use employer-provided electronic communications systems for Section 7 purposes violates Section 8(c) of the Act.
18.		The Employer excepts to the ALJ's failure to consider that his finding that employees are presumed to have a right to use employer-provided electronic communications systems for Section 7 purposes violates the First Amendment to the Union States Constitution.
19.		The Employer excepts to the ALJ's failure to apply to the instant dispute Board precedent regarding the extent to which an employer may lawfully bar distribution.
20.		The Employer excepts to the ALJ's failure to consider whether the Board's precedent regarding distribution rules or solicitation rules apply to employer rules regarding the use of employer-provided electronic communications systems.
21.	7:32-8:14.	The Employer excepts to the ALJ's decision to apply a retroactive remedy despite the novelty of the ALJ's conclusion.

Dated at Newport Beach, California this 13th day of May, 2015.

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By: 
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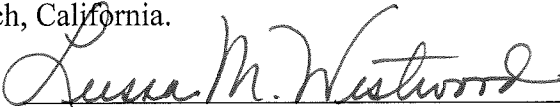
PROOF OF SERVICE
PURPLE COMMUNICATIONS, INC. v.
COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO
Case No. 21-CA-0951151, 21-RC-091531, and 21-RC-091584

I am employed in the County of Orange, State of California. I am over the age of 18 and am not a party to the within action. My business address is 620 Newport Center Drive, Suite 200, Newport Beach, California 92660. On **May 13, 2015**, I served the foregoing document described as follows:

**EXCEPTIONS OF RESPONDENT AND EMPLOYER TO DECISION AND ORDER
OF THE ADMINISTRATIVE LAW JUDGE**

- ☐ **By United States Mail:** I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Newport Beach, California, in the ordinary course of business. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices above I placed the package for collection and mailing the date and at the place of business set forth below.
- ☒ ****By Overnight Delivery:** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the person(s) at the address(es) listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- ☐ **By Fax Transmission:** I caused to be transmitted the document described herein via the fax number listed below. Upon completion of said facsimile transmission, the transmitting machine issued a transmission report showing the transmission was complete and without error.
- ☐ **By Messenger Service:** I served the above-referenced document(s) by placing them in an envelope or package addressed to the person(s) at the address(es) listed below and provided them to a professional messenger service for personal service.
- ☒ **By Electronic Service:** I caused the document to be sent to the person(s) at the e-mail address(es) listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- ☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- ☐ **(FEDERAL)** I declare under the laws of the United States of America that I am employed in the office of a member of the Bar of this court at whose direction the service was made and that the foregoing is true and correct.

Executed on **May 13, 2015**, at Newport Beach, California.


Leessa M. Westwood

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